IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 13277 of 2006(E)

E.P.243/99 IN OS.162/1996 of MUNSIFF'S COURT,CHAVAKKAD

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PETITIONERS:

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1. MEENAKSHIKUTTY, AGED 52 YRS,
   W/O. LATE VALIYAMEKKAT RAMAN NAIR,
   PORKULAM VILLAGE, DESOM, THALAPPILLY TALUK.

2. SATHEESH BABU, AGED 32 YEARS, S/O. DO. DO.

3. SAILAJA SOMANATH, AGED 29 YEARS, D/O. DO. DO.

4. JALAJA, AGED 22 YEARS, D/O. DO. DO.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS:

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1. VELAYUDHAN MASTER, AGED 50 YRS,
   S/O. MULLAYULLY AYYAPPAN, PORKULAM VILLAGE DESOM,
   THALAPPILLY TALUK.

2. SOMAN, AGED 38 YEARS,
   S/O. POTTAYIL MADHAVAN, DO. DO.

3. RADHAKRISHNAN, AGED 30 YEARS,
   S/O. KANJENGAT SAROJINI AMMA, DO. DO.

4. KUNHUNNY @ NEELAKANDAN BHATTATHIRIPPAD,
   AGED 52 YEARS, EMPLOYED AT KSRTC, S/O. PAYYUR
   DAMODHARAN BHATTATHIRIPPAD, DO. DO.

5. PARAMESWARAN NAIR, AGED 68 YEARS,
   S/O. ETTAZHI KALIKUTTY AMMA, DO. DO.

6. NEELAKANDAN BHATTATHIRIPPAD,
AGED 45 YEARS, S/O. PAYYUR KUNJU BHATTATHIRIPPAD,
DO. DO.

7. VENUGOPALAN, AGED 50 YEARS,
S/O. ETTAZHI SREEDEVI AMMA, DO. DO.

8. MADHUSOODHANAN, AGED 23 YEARS,
S/O. KARUMATH RAVUNNY AMMA, DO. DO.

9. RAMANUNNY, AGED 51 YEARS,
S/O. CHATHANDATH NANI AMMA, DO. DO.

10. CHANDRAN, AGED 49 YEARS,
S/O. THEKKEPPAT KARTHIYANI AMMA, DO. DO.

11. RAMAKRISHNAN, AGED 31 YEARS,
S/O. KUNNATH SARADA AMMA, DO. DO.

12. KRISHNANKUTTY, AGED 50 YRS,
S/O. THUMMALISSERY PARUKUTTY AMMA, DO. DO.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.SANTHOSH (PODUVAL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.13277/06

APPENDIX

PETITIONERS' EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN OS.162/96 OF MUNSIFF'S COURT, CHAVAKKAD.

EXT.P2 – TRUE COPY OF PETITION FILED UNDER ORDER I RULE 8 CPC ALONG WITH ORDERS PASSED BY THE COURT BELOW.

EXT.P3 – TRUE COPY OF JUDGMENT DT.25.7.96 IN OS.162/96 OF MUNSIFF'S COURT, CHAVAKKAD.

EXT.P4 – TRUE COPY OF SUICIDE NOTE OF RAMAN NAIR

EXT.P5 – TRUE COPY OF COMMN. REPORT ALONG WITH SKETCH DT.21.3.96 IN I.A.793/96 IN O.S.162/96 OF MUNSIFF'S COURT, CHAVAKKAD.

EXT.P6 – TRUE COPY OF EP. 243/99 FILED BY PETRS.

EXT.P7 – TRUE COPY OF COMMN. REPORT DT.26.11.99 IN EA.293/99 IN OS.162/96

EXT.P8 – TRUE COPY OF ORDER DT.10.2.06 IN EP.243/99 IN O.S.162/96 OF MUNSIFF, CHAVAKKAD.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.13277 OF 2006

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DATED THIS THE 22nd AUGUST, 2007

J U D G M E N T

A suit for injunction was filed against one Arumughan said to be an important functionary of the local branch of the Communist Party of India (Marxist). The suit was filed after obtaining leave of the court under Order I Rule 8 of the Code of Civil Procedure. Pursuant to orders passed by the court, publication regarding the pendency of the suit and inviting all persons interested in the subject-matter of the suit was made in Express Malayalam daily. Finally, the suit was decreed ex parte for the reason that neither Arumughan nor anybody else entered appearance before the court. Execution Petition has been filed against respondents 2 to 13 in the E.P. who are all local people, alleging that the decree of injunction is violated. The decree-holders produced several documents including Exts.A14 to A17 for substantiating their allegation that the injunction decree has been violated by respondents 2 to 13. The learned Munsiff would hold under the impugned order Ext.P8 that these documents have not been properly proved. More importantly, it has been held that the decree in question is one passed against Arumughan only and that it is not binding on anybody other than Arumughan.

2. I am afraid that the implications of the leave granted under Order I Rule 8 C.P.C. and the publication carried out in response to orders passed by court have not been taken into account by the learned Munsiff. I set aside the impugned order and direct the learned Munsiff to pass fresh orders on the E.P., giving reasons as to why in spite of the leave granted by the court to the predecessor of the petitioners, the original plaintiff under Order I Rule 8 of the Code and the situation that not even Arumughan, the named defendant did not raise any contest in the suit, the decree in question is not binding on respondents 2 to 13 who are concededly members of the local public to represent whom also Sri.Arumughan was arrayed in the suit in question.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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